

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	4:03CR3170
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM
)	AND ORDER
ALICE PEDROZA,)	
)	
Defendant.)	

This matter is before the court on Defendant's pro se notice of appeal (filing 54). The Clerk of Court has advised the undersigned in a memo (filing 55) that the appeal appears to be untimely, and has requested a ruling "on the issue of excusable neglect and good cause" pursuant to *United States v. Anna*, 843 F.2d 1146, 1147 (8th Cir. 1988).

The defendant's notice of appeal was filed on August 16, 2007, from the court's judgment of June 8, 2005 (filing 44), committing Defendant to a prison term of 120 months after Defendant pleaded guilty to one count of participating in a methamphetamine conspiracy. Defendant now seeks to appeal that conviction, claiming that her attorney refused to file a direct appeal because he advised that she "had no appealable issues." (Filing 54.) Defendant claims that "by [her attorney's] failure to perfect an appeal when he has not been relieved of his duties through successful withdrawal constitutes a violation of my Sixth Amendment Right." (Filing 54.)¹

¹This court has already considered and denied a 28 U.S.C. § 2255 motion filed by the defendant. The motion did not include a claim that the defendant's attorney failed to file a direct appeal from her conviction. (Filings 50, 52, 53.) Rather, the defendant's § 2255 motion focused on the validity of her guilty plea.

Obviously, the defendant's notice of appeal was not filed within the 10-day period specified by Fed. R. App. P. 4(b)(1)(A)(i), nor within the 30-day extended period provided for cases of excusable neglect or good cause under Fed. R. App. P. 4(b)(4). Thus, the appeal is untimely and no extension of time can be granted. Therefore, a certification that the defendant's appeal is not taken in good faith will be issued pursuant to Fed. R. App. P. 24(a)(3). Copies of this memorandum and order will be provided to the Court of Appeals and to Defendant's court-appointed attorney of record.

Accordingly,

IT IS ORDERED that:

1. Defendant's notice of appeal (filing 54), treated as a motion for extension of time to appeal pursuant to Fed. R. App. P. 4(b)(4), is denied.
2. The Clerk of the Court shall not process an appeal to the United States Court of Appeals for the Eighth Circuit on the basis of the aforesaid filing by Defendant.
3. Pursuant to Fed. R. App. P. 24(a)(3), the court certifies that Defendant's appeal is not taken in good faith, as the appeal is untimely and is without any apparent legal basis.
4. Pursuant to Fed. R. App. P. 24(a)(4), the Clerk of the Court shall forward a copy of this memorandum and order to the Clerk of the United States Court of Appeals for the Eighth Circuit.
5. The Clerk shall also forward a copy of this memorandum and order to Defendant's counsel of record, Thomas R. Lamb.

August 20, 2007.

BY THE COURT:

s/ *Richard G. Kopf*

United States District Judge